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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/511,735	02/24/2000	Michael S. Borella	99.447	5494

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

EXAMINER	
VAUGHN JR, WILLIAM C	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/511,735	BORELLA ET AL.	
	Examiner	Art Unit	
	William C. Vaughn, Jr.	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Action is in regards to the Response received on 21 November 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattaway et al. (Mattaway), U.S. Patent No. 6,185,184 in view of Hipp et al. (Hipp), U.S. Patent No. 6,891,837.

4. Regarding **claim 1**, Mattaway discloses the invention substantially as claimed. Mattaway discloses *a method for using multiple network addresses for interprocess communication through a common physical layer, comprising: creating a first interprocess communication data structure associated with a first network address on a first network device* [see Mattaway, Col. 23, lines 1-10]; *establishing a first communication between the first network device and a second network device using the first interprocess communication data structure and the first network address, wherein the first communication passes through the common physical layer for the first network device* [see Mattaway, Col. 23, lines 2-5]; *creating a second interprocess communication data structure associated with a second network address on the first network device, wherein the second network address is different from the first network address* [see Mattaway, Col. 24, lines 37-40]; *and establishing a second communication between the first*

network device and a third network device using the second interprocess communication data structure and the second network address [see Mattaway Col. 24, lines 29-40]. However, Mattaway does not explicitly disclose creating a second interprocess communication data structure associated with a second network address on the first network device, wherein the second network address is different from the first network address and establishing a second communication between the first network device and a third network device using the second interprocess communication data structure and the second network address the second communication passes through the common physical layer for the first network device.

5. In the same field of endeavor, Hipp discloses (e.g., virtual endpoints). Hipp discloses *creating a second interprocess communication data structure associated with a second network address on the first network device, wherein the second network address is different from the first network address and establishing a second communication between the first network device and a third network device using the second interprocess communication data structure and the second network address the second communication passes through the common physical layer for the first network device* (Hipp teaches a first socket module associates with a data channel with an existing socket endpoint as well as a data structure associated with the socket implementation. Furthermore, Hipp teaches multiple virtual addresses between first, second and third application that are associated with endpoints or sockets. Also, Hipp teaches utilizing a common data channel as a means of communication between the different computers and applications. Hipp also teaches establishing a communication with a third computer and having the ability to maintain communication along the same communication path as the first and

second applications.), [see Hipp, Col. 6, lines 40-67, Col. 7, lines 1-19, 31-67, Col. 8, lines 1-14, 37-67, Col. 11, lines 3-47].

6. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Hipp's teachings of virtual endpoints with the teachings of Mattaway, for the purpose of providing communication between two or more applications by utilizing virtual endpoints [see Hipp, Col. 3, lines 3-24].

7. Regarding **claim 2**, Mattaway-Hipp discloses a computer readable medium having stored therein instructions for causing a central processing unit to execute the method of Claim 1 [see Mattaway, Col. 4, lines 35-67 and Col. 5, lines 1-13]. By this rationale **claim 2** is rejected.

8. Regarding **claim 3**, Mattaway-Hipp discloses wherein the first interprocess communication data structure is a first socket comprising: a first socket descriptor with which a first process on the first network device accesses the first interprocess communication data structure [see rejection of claim 1, supra] and the first network address. By this rationale **claim 3** is rejected.

9. Regarding **claim 4**, Mattaway-Hipp discloses wherein the second interprocess communication data structure is a second socket comprising: a second socket descriptor with 'which a second process on the first network device accesses the second interprocess communication data structure [see rejection of claim 1, supra] and the second network address. By this rationale **claim 4** is rejected.

10. Regarding **claim 5**, Mattaway-Hipp discloses wherein the first network address and the second network address are Internet Protocol addresses [see Mattaway, table 6]. By this rationale **claim 5** is rejected.

11. Regarding **claim 6**, Mattaway-Hipp discloses wherein the step of creating the first or second interprocess communication data structure includes calling a reentrant socket networking function that allows multiple network addresses to be allocated (Mattaway teaches dynamically allocated IP addresses), [see Mattaway, Col. 6, lines 52-67 and Col. 7, lines 1-7]. By this rationale **claim 6** is rejected.

12. Regarding **claim 7**, Mattaway-Hipp discloses wherein the step of creating the first or second interprocess communication data structure includes calling a reentrant bind socket networking function that allows multiple network addresses to be allocated (Mattaway teaches dynamically allocated IP addresses), [see Mattaway, Col. 6, lines 52-67 and Col. 7, lines 1-7]. By this rationale **claim 7** is rejected.

13. Regarding **claim 8**, Mattaway-Hipp discloses *wherein the step of establishing the first or second communication includes calling a reentrant connect socket networking function that allows multiple network addresses to be allocated* (Mattaway teaches dynamically allocated IP addresses), [see Mattaway, Col. 6, lines 52-67 and Col. 7, lines 1-7]. By this rationale **claim 8** is rejected.

Response to Applicant's Declaration filed Under 37 C.F.R. 1.131

14. The Declaration filed on 21 November 2005 under 37 C.F.R. 1.131 has been considered but is ineffective to overcome the 35 U.S.C. 103(a) rejection utilizing Hipp et al. (Hipp), U.S. Patent No. 6,891,837 reference.

Conception

15. In analyzing Applicant's submitted affidavit. Examiner notes that Applicant has attempted to draw comparisons between and the claimed invention from the submitted

information disclosure statement. In submission of an affidavit or declaration Applicant must remember that each must clearly state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or WTO member country (MPEP § 715.07(c)), at least the conception being at a date prior to the effective date of the reference. The applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR 1.131). As stated within, 37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show: (A) reduction to practice of the invention prior to the effective date of the reference; or (B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or (C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice). After further analysis of the submitted documentation. Applicant has possibly showed conception. However, as stated above, conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice.

Diligence

16. The Office would like to point to Applicant that the evidence submitted is insufficient to establish diligence from a date prior to 05 October 1999 of the Hipp reference to 24 February

2000 the effective filing date of the application. Furthermore, the Examiner would like to point out that, "an applicant must account for the entire period during which diligence is required." Gould v. Schawlow, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); Kendall v. Searles, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) Diligence requires that applicants must be specific as to dates and facts. Applicant has not provide sufficient evidence to show due diligence. See MPEP 2138.06. Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence. In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. Ex parte Kantor, 177 USPQ 455 (Bd. App. 1958). What is meant by diligence is brought out in Christie v. Seybold, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See In re Nelson, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention. Under 37 CFR 1.131, the critical period in which diligence must be

shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See Ex parte Merz, 75 USPQ 296 (Bd. App. 1947).

17. Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence.

18. For the reasons above, the declaration is considered to be ineffective to overcome the Cheline reference.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Vaughn, Jr. whose telephone number is (571) 272-3922. The examiner can normally be reached on 8:00-6:00, 1st and 2nd Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William C. Vaughn, Jr.
Primary Examiner
Art Unit 2143
08 February 2006

WCV